Khow Ngee Sun v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–367 OF 2010
BALIA YUSOF, MOHTARUDIN BAKI AND TENGKU MAIMUN JJCA
18 NOVEMBER 2013

Criminal Procedure — Appeal — Appeal against conviction and sentence — Appellant charged with drug trafficking — Whether drug exhibits produced at trial were same exhibits seized from appellant — Whether discrepancies in prosecution evidence raised doubt as to identity of drug exhibits — Whether amended charge preferred against appellants bad in law — Whether defective charge occasioned failure of justice or caused any prejudice to appellant — Whether trial judge erred in finding that appellant was keeping ketamine for purposes of sale to others

Acting on information received about a drug trafficking activity at an apartment situated in Selangor, a police party had conducted a raid of the apartment. The raiding party gained entry into the apartment and conducted a search of the apartment but nothing illegal was found in the apartment. Whilst the raiding team was in the apartment, the appellant had arrived knocking at the front door carrying a sling bag. When an officer of the raiding team had identified himself to the appellant, the latter had tried to escape. The police officer had given chase and managed to apprehend and arrest the appellant. The items recovered from a body search of the appellant led the raiding team to another location, namely a condominium located in Petaling Jaya ('the condominium'). When the condominium was raided, the raiding team recovered several packets of dangerous drugs, which were later analysed and confirmed by the chemist to be four different types of dangerous drugs namely ketamine, MDMA, methamphetamine and MDA. These four different types of drugs formed the subject matter of the amended charge against the appellant. At the end of the prosecution's case, the trial judge found that the appellant had exclusive possession of the condominium and the room from where the dangerous drugs were recovered by the officers of the raiding team. The trial judge also found that owing to the large quantity of ketamine and the other drugs found, the appellant was keeping the same for the purposes of sale to others. The appellant was thus ordered to enter his defence. The appellant denied any knowledge of the drugs. Essentially the defence of the appellant was that he had rented the condominium together with two others and that the room in which the drugs were found was not his room but one used by one of the other two, one Ah Fei. The trial judge found the appellant guilty of the charge and thus convicted and sentenced him to death. Hence the present appeal based primarily on the grounds that there were doubts as to the

identities of the drug exhibits and that the charge was defective. It was the appellant's submission that there were discrepancies in the prosecution evidence that raised doubts as to the identity of the drug exhibits, which was not considered by the trial judge. The appellant also submitted that the amended charge preferred against him was bad in law in that there should have been four separate charges against the appellants instead of one charge for trafficking in four different types of drugs. In response the prosecution contended that because of the proximity of time and place, the charges could be lumped together and that in any case there was no prejudice caused to the appellant by this defective charge.

Held, dismissing the appeal:

(1) Although the appellant had not challenged the discrepancies in the prosecution evidence regarding the identity of the drug exhibits, the trial judge had made a finding on the chain of evidence. As such, and based on the facts and circumstances of the present case, there was no reason to disturb the findings of the trial judge on this issue. The trial judge had addressed the real question as to whether the drug exhibits were the drugs seized that were sent to the chemist for analysis (see paras 17–18).

(2) Of the four different types of drugs, which formed the subject matter of the amended charge against the appellant, the offence of trafficking in respect of three types of drugs ie MDMA, methamphetamine and MDA was punishable under s 39A(1) of the Dangerous Drugs Act 1952 ('DDA') whereas the offence of trafficking in ketamine fell under s 39B(1)(a) of the DDA. Be that as it may the lumping of the four different types of drugs per se did not render the conviction a nullity. This was because the appellant was only convicted on the charge of ketamine and not in respect of the other three types of drugs. Thus, the defective charge had not occasioned a failure of justice or caused any prejudice to the appellant (see paras 20–24).

(3) There was no error on the part of the trial judge in finding that the appellant was keeping the ketamine for purposes of sale to others. The act of 'keeping' clearly fell within the definition of trafficking under s 2 of the DDA (see para 25).

[Bahasa Malaysia summary

Bertindak atas maklumat yang diterima mengenai aktiviti pengedaran dadah di pangsapuri yang terletak di Selangor, pasukan polis mengadakan serbuan di pangsapuri tersebut. Pasukan serbuan tersebut dapat memasuki pangsapuri tersebut dan melakukan carian terhadap pangsapuri tetapi tiada bahan haram diperolehi di dalam pangsapuri tersebut. Sementara pasukan serbuan berada di dalam pangsapuri, perayu tiba dengan mengetuk pintu hadapan dengan membawa beg galas. Apabila pegawai pasukan serbuan memperkenalkan

dirinya kepada perayu, perayu cuba melarikan diri. Pegawai polis telah mengejar dan berjaya menangkap perayu. Bahan-bahan yang didapati daripada carian badan ke atas perayu membawa pasukan serbuan ke lokasi lain, iaitu pangsapuri yang terletak di Petaling Jaya ('pangsapuri tersebut'). Apabila pangsapuri tersebut diserbu, pasukan serbuan menemui beberapa paket dadah berbahaya, yang kemudiannya dianalisa dan disahkan oleh ahli kimia empat jenis dadah berbahaya yang berbeza iaitu ketamine, MDMA, methamphetamine dan MDA. Keempat-empat jenis dadah ini membentuk perkara tuduhan dipinda terhadap perayu. Di akhir kes pihak pendakwaan, hakim perbicaraan mendapati bahawa perayu mempunyai milikan eksklusif pangsapuri dan bilik di mana dadah berbahaya tersebut ditemui oleh pegawai pasukan serbuan tersebut. Hakim perbicaraan juga mendapati bahawa berdasarkan kuantiti besar ketamine dan dadah lain yang ditemui, perayu menyimpannya untuk tujuan menjual kepada orang lain. Perayu oleh itu diperintahkan untuk memasukkan pembelaan. Perayu menafikan apa-apa pengetahuan mengenai dadah tersebut. Pada dasarnya pembelaan perayu adalah bahawa dia menyewa pangsapuri tersebut bersama dengan dua orang yang lain dan bahawa bilik di mana dadah tersebut ditemui bukan biliknya tetapi satu yang diguna oleh salah seorang daripada dua orang yang lain, seorang yang bernama Ah Fei. Hakim perbicaraan mendapati bahawa perayu bersalah terhadap tuduhan dan oleh itu disabitkan dan menjatuhkan hukuman mati. Maka rayuan ini berdasarkan terutamanya atas alasan-alasan bahawa terdapat kesangsian terhadap identiti dadah yang dilampirkan dan bahawa tuduhan adalah cacat. Ini adalah hujahan perayu bahawa terdapat percanggahan di dalam keterangan pihak pendakwaan yang membangkitkan kesangsian kepada identiti dadah yang dilampirkan, yang tidak dipertimbangkan oleh hakim perbicaraan. Perayu juga berhujah bahawa tuduhan yang dipinda yang dikenakan terhadapnya adalah salah di sisi undang-undang di mana patut terdapat empat tuduhan berasingan terhadap perayu-perayu tetapi sebaliknya satu tuduhan untuk pengedaran dalam empat jenis dadah yang berbeza. Dalam menjawab pihak pendakwaan berhujah bahawa oleh kerana jarak masa dan tempat, tuduhan-tuduhan boleh dicampurkan bersama dan bahawa walau bagaimanapun prejudis tidak dilakukan terhadap perayu oleh tuduhan cacat ini.

Diputuskan, menolak rayuan:

(1) Walaupun perayu tidak mencabar percanggahan di dalam keterangan pihak pendakwaan berkenaan identiti dadah yang dilampirkan, hakim perbicaraan telah membuat dapatan atas rantai keterangan. Oleh itu, dan berdasarkan fakta dan keadaan kes ini, tidak terdapat alasan untuk campur tangan dapatan hakim perbicaraan atas isu ini. Hakim perbicaraan telah menjawab persoalan sebenar terhadap sama ada dadah yang dilampirkan adalah dadah yang dirampas yang dihantar kepada ahli kimia untuk dianalisa (lihat perenggan 17–18).

(2) Daripada empat jenis dadah yang berbeza, yang membentuk perkara tuduhan dipinda terhadap perayu, kesalahan mengedar berkaitan tiga jenis dadah iaitu MDMA, methamphetamine dan MDA boleh dihukum di bawah s 39A(1) Akta Dadah Berbahaya 1952 ('ADB') sebaliknya kesalahan mengedar ketamine terangkum di bawah s 39B(1)(a) ADB. Oleh itu mencampurkan kempat-empat jenis dadah berbeza itu sendiri tidak menyebabkan sabitan tersebut batal. Ini adalah kerana perayu hanya disabitkan atas tuduhan ketamine dan bukan berkaitan ketiga-tiga jenis dadah yang lain. Oleh itu, tuduhan cacat tidak mengakibatkan ketidakadilan atau menyebabkan apa-apa prejudis kepada perayu (lihat perenggan 20–24).

(3) Tiada kesilapan oleh hakim perbicaraan dalam mendapati bahawa perayu menyimpan ketamine untuk tujuan menjual kepada yang lain. Perbuatan 'keeping' jelas terangkum dalam definisi pengedaran di bawah s 2 ADB (lihat perenggan 25).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Arumugam Periasamy v PP [2005] 3 CLJ 685, CA (refd)
Hasbala bin Mohd Sarong v PP [2013] 6 MLJ 636, FC (refd)
Loh Kah Loon v PP [2011] 4 MLJ 260; [2011] 5 CLJ 345, FC (refd)
Ong Ah Chuan v PP, Koh Chai Cheng v PP [1981] 1 MLJ 64, PC (refd)
PP v Abdul Manaf bin Muhamad Hassan [2006] 3 MLJ 193, FC (refd)
Yong Yow Chee v PP [1998] 1 SLR 273, CA (refd)
Zaifull bin Muhammad v PP & Another Appeal [2013] 2 MLJ 348; [2013] 2 CLJ 383, FC (folld)

Legislation referred to

Courts of Judicature Act 1964 s 60(1)
Criminal Procedure Code ss 163, 422
Dangerous Drugs Act 1952 ss 2, 12, 37(da), 39(A)(1), 39B(1)(a), 39(B)(2)

Appeal from: 45–5 of 2008, (High Court, Shah Alam)

Hisyam Teh Poh Teik (Teh Poh Teik & Co) for the appellant.
Tengku Amir Zaki bin Tengku Abdul Rahman (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Tengku Maimun JCA:

[1] The appellant was charged for trafficking in dangerous drugs. The amended charge ('exh P5') reads:

A Bahawa kamu pada 25 Oktober 2007, jam lebih kurang 2.00 petang di alamat No. Y-16-3, Block Kayangan, D'aman Crimson Apartments, Jalan PJU 1A/41, Ara Jaya di dalam daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah mengedar dadah berbahaya iaitu 12,915.17 gram Ketamine, 20.51 gram 3,4 — Methylenedioxymethamphetamine (MDMA), 47.8 gram Methamphetamine dan
B 0.35 grams of Methylenedioxy-amphetamine (MDA), dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

C **[2]** The prosecution's case is as follows. On 22 October 2007 the police party led by PW5, laid an ambush outside an apartment K-10-3, Apartment Perdana Puri, Kepong, Selangor. At about 8.15pm, they saw a woman coming out of the apartment. PW5 introduced himself to the woman as a police officer who then took PW5 to the apartment. PW5 searched the apartment but he did not
D find anything illegal. At about 10pm, PW5 heard knocking on the front door of the apartment. He opened the door and saw a male Chinese (identified as the appellant) outside the grille door of the apartment. SP5 saw the appellant carrying a black coloured sling bag. PW5 introduced himself as a police officer to the appellant. Before PW5 could open the grille door, the appellant ran to
E the emergency exit. PW5 gave chase. The appellant was arrested and a body search was done where PW5 recovered among others, an access card, a mobile phone and a keychain with three keys. The appellant was brought back to the apartment where another access card was recovered from the appellant's bedroom. The mobile phone, the keys and the access cards were held by PW5
F pending further information as the appellant had refused to disclose the purpose of the keys.

[3] On 24 October 2007 at about 1.30pm PW5 received a call on the mobile
G phone seized from the appellant. The call came from a male Chinese who identified himself as Mr Wee ('PW6'). Simply put, PW6's call pertained to the installation of an air conditioner at unit Y-16-13, Block Kayangan, Crimson Apartments, Petaling Jaya ('the condominium'). PW6 had rented the said condominium to the appellant.

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[4] On 25 October 2007 at about 2pm, the raiding team consisting of PW1, PW4, PW11 and several other police officers together with the appellant went to Crimson Apartments. With the access cards recovered from the appellant the police was able to enter the car park and the lift. They went up to the 16th floor
I and to the condominium. PW4 managed to open the front grille and the wooden door using two out of the three keys on the keychain. The front grille door was padlocked using combination numbers. The police tried for 10–15 minutes with different numbers connected to the appellant ie his birth date, his identity card number and his mobile phone number but they were not

successful. Finally PW1 thought of the appellant's car No 8777 and the police managed to unlock the padlock using the said number.

[5] The raiding team entered the condominium and found that it was empty. Except for some clothings hanging in the living hall, there was no furniture in the said condominium. There were three rooms. Two rooms were unlocked and one room was locked. Using a key on the keychain, PW4 unlocked the door of the locked room. On the floor at the left corner of the said room PW1 found one 'POLO' bag. Inside the bag, PW1 found the following items:

(a) ten aluminium packets which contained transparent plastic filled with a white coloured powder suspected to be ketamine;

(b) three transparent plastic packets filled with a crystal like substance suspected to be ketamine;

(c) six transparent plastic packets filled with a crystal like substance suspected to be syabu;

(d) one transparent plastic packet which contained 14 white coloured plastic packets filled with 1275 red coloured pills suspected to be ecstacy pills;

(e) one transparent plastic packet which contained 13 small plastic packets each filled with green coloured pills totalling 620 pills suspected to be ecstacy pills; and

(f) one transparent plastic packet which contained a variety of different coloured pills totalling 64 pills suspected to be ecstacy pills.

[6] PW1 also found a red coloured plastic pail containing a white coloured powder which he suspected to be ketamine and a black coloured bag which contained empty transparent plastic packets of varying sizes. All the items found were seized and handed over to the investigating officer, PW12. Upon analysis, the chemist ('PW2') confirmed the substances contained the four types of drugs which formed the subject matter of the amended charge against the appellant.

[7] At the end of the prosecution's case, the learned trial judge found that the appellant had exclusive possession of the condominium and the room from where the dangerous drugs were recovered by PW1. The learned trial judge then drew an inference that the appellant had mens rea possession of the drugs inside the locked room, the reasons being that he had the sole custody and control of the drugs inside the locked room and that he had knowledge of the contents in the bag which he had kept them secured under lock and key and that he could gain access to them whenever he wished to.

[8] Applying s 2 of the Act and taking into account the quantity of ketamine recovered; the transparent empty plastic bags of varying sizes and a quantity of

rubber bands, the learned trial judge was satisfied that the ketamine could not have been for the personal consumption of the appellant and that the appellant was keeping it at his rented condominium for purposes of sale to others. The learned trial judge ordered the appellant to enter his defence.

[9] Essentially, the defence of the appellant was that he had rented the house together with one Ah Fei and one Ah Seng. According to the appellant, he had chosen the room at the back; that the locked room was Ah Fei's room and that Ah Fei had a set of duplicate keys made of the three keys. The appellant further said that it was Ah Fei who had suggested using the registration number of the appellant's car as the combination number of the padlock. The appellant denied any knowledge of the drugs inside the bag and said that he had never seen all those items before. The appellant said the items probably belong to Ah Fei.

[10] At the conclusion of the trial, the learned trial judge found that the defence of the appellant was an afterthought and did not raise a reasonable doubt on the prosecution's case. The names Ah Fei and Ah Seng were only raised in the defence and the possibility that the drugs belong to Ah Fei or Ah Seng was never suggested to any of the prosecution's witnesses. The appellant was thus convicted and sentenced to death, hence this appeal.

THE APPEAL

[11] Although the petition of appeal contains several grounds of appeal, before us, learned counsel for the appellant canvassed only the following grounds:

(a) that there are doubts as to the identities of the drug exhibits; and

(b) that the charge is defective.

On these two grounds, learned counsel for the appellant submitted that the conviction is not safe.

[12] The issue on the identity of the drugs relates to the discrepancy between the oral evidence of PW1 and the police report ('exh P7') on one hand and the search list ('exh P12') and the *Borang Serah/Terima Barang Kes* ('exh P14') on the other with regard to the total number of packets of ketamine. The oral evidence of PW1 states that apart from the ten aluminium packets which contained powder suspected to be ketamine, he also found '3 plastik lutsinar berisi serbuk putih di syaki dadah ketamine.' This is consistent with the police report exh P7 which states, '… 3 plastik lutsinar berisi serbuk putih disyaki dadah ketamine …' However, the search list ('exh P12') and *Borang Serah/Terima Barang Kes* ('exh P14') show that there were four plastic packets.

There was another discrepancy which relates to the number of ecstacy pills. The oral evidence of PW1 revealed that there were 620 pills whereas his police report shows that there were 625 pills. There was no explanation by SP1 on the discrepancies. Relying on the case of *Zaifull bin Muhammad v Public Prosecutor & Another Appeal* [2013] 2 MLJ 348; [2013] 2 CLJ 383, learned counsel submitted that these discrepancies have struck at the very heart of the prosecution's case and that defence ought not to have been called.

[13] The learned deputy public prosecutor conceded that there were inconsistencies in respect of the packets of the drugs. However, it was the submission of learned deputy that there was no break in the chain of evidence; that the 625 pills were not the subject of conviction and that there must be a challenge on the exhibits at the trial, which in this case there was none. What is more important, argued learned deputy, is whether the court can say that the drug exhibits are the same as the ones recovered by PW1. In the alternative, learned deputy submitted that this court can re-evaluate the case and invoke the proviso to s 60(1) of the Courts of Judicature Act 1964.

[14] The second issue raised by learned counsel for the appellant was that the amended charge preferred against the appellant in the court below was bad in law as it is in violation of s 163 of the Criminal Procedure Code ('CPC'). The appellant was charged for trafficking in four different types of drugs. It was the submission of learned counsel for the appellant that there should have been four separate charges against the appellant and that the lumping of the charge had caused serious prejudice to the appellant.

[15] It was further the submission of learned counsel that the learned trial judge's approach as regards trafficking is wrong in law. This argument relates to the charge of 0.35 of MDA; 47.8g of methamphetamine and 20.51g of MDMA where under s 12 of the Act (which provides for the offence of having in possession, custody and control of dangerous drugs without authorisation) trafficking does not apply. In respect of ketamine, learned counsel submitted that the prosecution must produce evidence of direct trafficking as the law does not provide for presumption in trafficking for ketamine. The submission of learned counsel was that there must be an overt act, more than just mere 'keeping' whereas the learned trial judge had only relied on 'keeping' under s 2 of the Act. Citing the case of *Arumugam Periasamy v Public Prosecutor* [2005] 3 CLJ 685, it was the argument of learned counsel that conviction cannot stand as the finding of the learned trial judge was only in respect of keeping of ketamine and that there was no evidence of the appellant keeping the drugs for purposes of sale.

[16] In response, learned deputy submitted that because of the proximity of time and place, the charges could be lumped together and that there was no

A prejudice caused to the appellant by this defective charge. The appellant was represented and he was able to make a proper defence. Learned deputy relied on s 422 of the CPC to submit that a defective charge cannot be the reason to acquit the appellant.

B OUR FINDINGS

[17] On the issue of identity of the drugs, the complaint by learned counsel for the appellant is that there was no explanation by PW1 on the discrepancies in the number of drug exhibits and that this aspect of the evidence of PW1 was not considered by the learned trial judge.

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[18] Indeed, in the grounds of judgment, the learned trial judge did not deal with the discrepancies in the evidence of PW1. We noted from the appeal records that during the trial, there was no challenge by the defence on the discrepancies in the evidence of PW1 regarding the drug exhibits. Neither was the issue raised by learned counsel for the appellant in their submission at the close of the prosecution's case. However, the learned trial judge did make a finding on the chain of evidence. On the facts and circumstances of this case, we have no reason to disturb the finding of the learned trial judge when Her Ladyship said 'The court also found that the seized items suspected to contain dangerous drugs were positively identified by PW1 who had made the recovery and seizure and that there was no break in the chain of evidence relating to them right until their production in court. They were also positively identified by the government chemist and the IO …'. The learned trial judge had addressed the real question which is whether the exhibit recovered by PW1 is the same exhibit sent to PW2 for analysis and subsequently produced in court as evidence (see *Loh Kah Loon v Public Prosecutor* [2011] 4 MLJ 260; [2011] 5 CLJ 345; *Hasbala bin Mohd Sarong v Public Prosecutor* [2013] 6 MLJ 636).

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[19] On the issue of the defective charge, the argument of learned counsel is premised on s 163 of the CPC which provides 'For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately…'.

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[20] The four different types of dangerous drugs which form the subject matter of the charge against the appellant were ketamine, MDMA, methamphetamine and MDA. While ketamine falls under s 39B(1)(a) of the Act, the presumption of trafficking under s 37(da) does not apply to ketamine. As for the other three types of drugs, the weight is not sufficient to attract the presumption of trafficking under s 37(da) of the Act. The presumption is applicable where any person is in possession of 50g or more in weight of MDMA; 50g or more in weight of methamphetamine and 50g or more in weight of MDA. In the instant case, the weight of MDMA was 20.51g;

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methamphetamine was 47.8g and MDA was in the quantity of 0.35g. The offence in respect of methamphetamine, MDMA and MDA is thus punishable under ss 39A(1) and not 39B(2) of the Act. We therefore agree with learned counsel that there should have been four separate charges against the appellant for the four different types of drugs.

[21] Be that as it may, it is our judgment that the lumping of the four different types of drugs per se does not render the conviction a nullity. Section 422 of the CPC provides:

> Subject to the provisions contained in this Chapter no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of —
>
> (a) any error, omission or irregularity in the complaint, sanction, consent, summons, warrant, charge, judgment or other proceedings before or during trial, or in any inquiry or other proceedings under this Code;
>
> (b) …
>
> (c) …
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> unless such error, omission, irregularity, want, or improper admission or rejection of evidence has occasioned a failure of justice.

[22] Hence, what needs to be considered is whether the defective charge against the appellant had occasioned a failure of justice or had caused any prejudice to the appellant (see *Yong Yow Chee v Public Prosecutor* [1998] 1 SLR 273).

[23] We find from the grounds of judgment that the appellant was convicted on the charge of ketamine. This is clear from the following finding of the learned trial judge where Her Ladyship had specifically referred to ketamine in calling for the defence of the appellant:

> Based on the considerably large quantity of ketamine recovered by PW1 and also the recovery by PW1 of a bag containing a quantity of transparent empty plastic packets of varying sizes, P43, P44 and P45, and a quantity of rubber bands, P46, the court was satisfied that the ketamine could not have been for the personal consumption of the accused and that the accused was keeping it at his rented condominium for purposes of sale to others (see the cases of *DA Duncan v Public Prosecutor* [1980] 2 MLJ 195 and *Public Prosecutor v Abdul Manaf bin Muhammad Hassan* [2006] 3 MLJ 193).

[24] Since the conviction was not in respect of MDMA, methamphetamine and MDA, we find that the defective charge had not occasioned a failure of justice nor had it caused any prejudice to the appellant.

[25] The other point raised by learned counsel was in respect of the finding of trafficking. The learned trial judge had relied on the act of 'keeping' coupled with the quantity of the drugs and the recovery of transparent empty plastic packets of varying sizes and a quantity of rubber band to find that the appellant was keeping the ketamine for purposes of sale to others. We are of the view that there was no error on the part of the learned trial judge in taking such approach as 'keeping' clearly falls within the definition of trafficking under s 2 of the Act (see *Ong Ah Chuan v Public Prosecutor Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64; *Public Prosecutor v Abdul Manaf bin Muhamad Hassan* [2006] 3 MLJ 193).

[26] Having considered the factual matrix we are of the view that the conviction against the appellant is safe. In the circumstances, we unanimously dismissed the appeal. We affirmed the conviction and sentence by the High Court.

Appeal dismissed.

Reported by Kohila Nesan